Supreme Court, U.S.
FILED
FEB 23 1995
OFFICE OF THE CLERK

(8)

No. 94-5707

In The Supreme Court of the United States

OCTOBER TERM, 1994

SHARLENE WILSON — PETITIONER

V.

STATE OF ARKANSAS — RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

BRIEF FOR THE RESPONDENT

WINSTON BRYANT
Arkansas Attorney General

OF COUNSEL:

ANDREW D. LEIPOLD
University of Illinois
College of Law
504 E. Pennsylvania Ave.
Champaign, IL 61820
(217) 333-0931

KENT G. HOLT*
VADA BERGER
DAVID R. RAUPP
Assistant Attorneys General
200 Tower Building
323 Center Street
Little Rock, AR 72201
(501) 682-2007

ATTORNEYS FOR RESPONDENT

*COUNSEL OF RECORD

February 23, 1995

PARAGON PRINTING & STA., 311 East Capitol Avenue, Little Rock, AR 72203 (501) 375-1281

BEST AVAILABLE COPY

63 pp

QUESTION PRESENTED

Does the Fourth Amendment to the United States Constitution require law-enforcement officers to knock and announce their authority and purpose before executing a valid search warrant?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 5

ARGUMENT 7

I. THE FOURTH AMENDMENT DOES NOT REQUIRE LAW-ENFORCEMENT OFFICERS TO KNOCK AND ANNOUNCE BEFORE EXECUTING A SEARCH WARRANT 7

A. The Warrant Clause Does Not Require Law-Enforcement Officers To Knock And Announce Before Executing A Search Warrant 8

B. The Reasonableness Clause Does Not Require Law-Enforcement Officers To Knock And Announce Before Executing A Search Warrant 9

1. A Balancing Of The State And Private Interests At Stake Does Not Require Knock And Announce To Precede Execution Of A Search Warrant As A Matter Of Fourth-Amendment Law 10

2. Any Common-Law Practice And State Practice Do Not Change The Constitutional Balance 19

II. ASSUMING THAT THE FOURTH AMENDMENT REQUIRES LAW-ENFORCEMENT OFFICERS TO KNOCK AND ANNOUNCE BEFORE EXECUTING A SEARCH WARRANT IN SOME CASES, THE POLICE OFFICERS' FAILURE TO DO SO IN THIS CASE WAS REASONABLE 25

A. The Failure To Knock And Announce Was Not Unreasonable 26

B. Exigent Circumstances Excused The Failure To Knock And Announce 27

III. ASSUMING THAT THE POLICE OFFICERS' FAILURE TO KNOCK AND ANNOUNCE WAS UNREASONABLE UNDER THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE DOES NOT REQUIRE THE SUPPRESSION OF THE EVIDENCE SEIZED IN THIS CASE 29

A. The Failure To Knock And Announce Is Not An Illegal But-For Cause For The Discovery Of Evidence Under A Proper Search Warrant Which Mandates Exclusion To Enforce The Fourth Amendment 30

B. Even If Exclusion Would Ordinarily Be The Appropriate Remedy, Exclusion Is Not Required Here Because The Entry Was Made In Good-Faith Reliance On State Law That Knock And Announce Was Not Required 32

CONCLUSION 35

APPENDICES

Appendix A 1a

Appendix B 1b

TABLE OF AUTHORITIES

CASE Page

Bell v. Wolfish, 441 U.S. 520 (1979) 23

Carroll v. United States, 267 U.S. 132 (1925) 23

Commonwealth v. Bull, 422 Pa. Super. 67, 618 A.2d 1019 (1993) 8b

Commonwealth v. Goggin, 412 Mass. 200, 587 N.E.2d 785 (1992) 25

Commonwealth v. Gross, 758 S.W.2d 436 (Ky. 1988) 4b

Commonwealth v. Lopez, 31 Mass. App. Ct. 547, 581 N.E.2d 485, *review denied*, 411 Mass. 1105, 586 N.E.2d 10 (1991) 32

Commonwealth v. Scalise, 387 Mass. 413, 439 N.E.2d 818 (Mass. 1982) 5b

Commonwealth v. Woody, 13 Va. App. 168, 409 S.E.2d 170 (1991) 9b

Crabtree v. State, 479 N.E.2d 70 (Ind. Ct. App. 1985) 3b

Dalia v. United States, 441 U.S. 238 (1979) 9, 14

Dandridge v. Williams, 397 U.S. 471 (1970) 27

Delaware v. Prouse, 440 U.S. 648 (1979) 10

Dodson v. State, 4 Ark. App. 1, 626 S.W.2d 624, *cert. denied*, 457 U.S. 1136 (1982) 33, 34

Doles v. State, 280 Ark. 299, 657 S.W.2d 538 (1983) 17

Dunfee v. State, 346 A.2d 173 (Del. 1975) 2b

Ellerbee v. State, 631 S.W.2d 480 (Tex. Crim. App. 1981) 8b

Gamble v. Oklahoma, 546 P.2d 1336 (Okla. Crim. App. 1976) 7b

Graham v. Connor, 490 U.S. 386 (1989) 13

Heaton v. Commonwealth, 215 Va. 137, 207 S.E.2d 829 (1974) 9b

Hickson v. State, 316 Ark. 783, 875 S.W.2d 492 (1994) 33

Hopes v. State, 294 Ark. 319, 742 S.W.2d 561 (1988) 17

Hudson v. State, 792 P.2d 290 (Alaska Ct. App. 1990) 1b

Illinois v. Krull, 480 U.S. 340 (1987) 32, 33, 34

Keith v. State, 542 S.W.2d 839 (Tenn. Crim. App. 1976) ... 8b

Ker v. California, 374 U.S. 23 (1963) 7, 24, 27, 31

Launock v. Brown, 2 Barn. & Ald. 592, 106 Eng. Rep. 482 (K.B. 1819) 22

Lobatos v. State, 875 P.2d 716 (Wyo. 1994) 10b

Lockhart v. Fretwell, 113 S. Ct. 838 (1993) 34

Mapp v. Ohio, 367 U.S. 643 (1961) 7

Marshall v. Barlow's, Inc., 436 U.S. 307 (1978) 9

Maryland v. Buie, 494 U.S. 325 (1990) 9, 11

Maryland v. Garrison, 480 U.S. 79 (1987) 17

McClellan v. State, 452 So.2d 909 (Ala. Crim. App. 1984) 1b

Michigan v. Summers, 452 U.S. 692 (1981) 12, 16, 31

Miller v. United States, 357 U.S. 301 (1958) 7, 32

Minnesota v. Dickerson, 113 S. Ct. 2130 (1993) 24

Nix v. Williams, 467 U.S. 431 (1984) 30, 31

Oliver v. United States, 466 U.S. 170 (1984) 21

Payton v. New York, 445 U.S. 573 (1980) 23

Pennsylvania v. Mimms, 434 U.S. 106 (1977) 10, 11

People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974) 1b

People v. Atkinson, 122 A.D.2d 385, 505 N.Y.S.2d 203 (1986) 7b

People v. Kerschner, 132 Mich. App. 623, 348 N.W.2d 282 (1987) 5b

People v. Maddox, 46 Cal. 2d 301, 294 P.2d 6, *cert. denied*, 352 U.S. 858 (1956) 31

People v. Santiago, 71 Cal.2d 18, 453 P.2d 353, 76 Cal. Rptr. 809 (1969) 1b

People v. Seaberg, 262 Ill.App. 3d 79, 635 N.E.2d 126 (1994) 3b

Poole v. United States, 630 A.2d 1109 (D.C. App. 1993), *cert. denied*, 115 S. Ct. 160 *and* 115 S. Ct. 166 (1994) 2b

Ratcliffe v. Burton, 3 Bos. & Pul. 223, 127 Eng. Rep. 123 (C.P. 1802) 22

Sabbath v. United States, 391 U.S. 585 (1968) 7, 27, 32

Scott v. United States, 436 U.S. 128 (1978) 28

Scull v. State, 122 Ga. App. 696, 178 S.E.2d 720 (1970) 3b

Segura v. United States, 468 U.S. 796 (1984) 12, 30, 31

Semayne's Case, 77 Eng. Rep. 194 (K.B. 1603) 19, 20, 21, 22, 23

Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989) 9

State v. Allyn, 40 Wash. App. 27, 696 P.2d 45 (1985) 10b

State v. Attaway, 117 N.M. 141, 870 P.2d 103 (1994) 6b

State v. Bamber, 630 So.2d 1048 (Fla.1994) 25, 2b

State v. Cohrs, 484 N.W.2d 223 (Iowa Ct. App. 1992) 4b

State v. Davenport, 55 Haw. 90, 516 P.2d 65 (1973) 3b

State v. Ford, 310 Or. 623, 801 P.2d 754 (1990) 7b

State v. Hider, 649 A.2d 14 (Me. 1994) 4b

State v. Johnson, 102 R.I. 344, 230 A.2d 831 (1967) 8b

State v. Lee, 863 P.2d 49 (Utah Ct. App. 1993) 9b

State v. Love, 233 N.J.Super. 38, 558 A.2d 15 (1989) 6b

State v. Matos, 135 N.H. 410, 605 A.2d 223 (1992) 6b

State v. Meyer, 209 Neb. 757, 311 N.W.2d 520 (1981) 6b

State v. Ogden, 640 A.2d 6 (Vt. 1993) 9b

State v. Ortega, 117 N.M. 160, 870 P.2d 122 (199) 6b

State v. Parrish, 852 S.W.2d 426 (Mo. Ct. App. 1993) 5b

State v. Pelletier, 209 Conn. 564, 552 A.2d 805 (1989) 2b

State v. Prevette, 43 N.C. App. 450, 259 S.E.2d 595 (1979), *cert. denied*, 447 U.S. 906 (1980) 7b

State v. Price, 564 So.2d 1239 (Fla. Dist. Ct. App. 1990) .. 2b

State v. Rauch, 99 Idaho 586, 586 P.2d 671 (1978) 3b

State v. Rosenbaum, 845 P.2d 962 (Utah Ct. App. 1993) ... 9b

State v. Sakellson, 379 N.W.2d 779 (N.D. 1985) 7b

State v. Steingraber, 296 N.W.2d 543 (S.D. 1980) 8b

State v. Stevens, 181 Wis.2d 410, 511 N.W.2d 591 (1994), *petition for cert. filed* (U.S. No. 93-9026) (May 4, 1994) 16, 29, 10b

State v. Tyler, 251 Kan. 616, 840 P.2d 413 (1992) 4b

State v. Valento, 405 N.W.2d 914 (Minn. Ct. App. 1987) ... 5b

State v. Viera, 449 So.2d 644 (La. Ct. App. 1984) 4b

State v. Watkinson, 161 Wis.2d 750, 468 N.W.2d 763 (Wis. Ct. App. 1991) 10b

Tennessee v. Garner, 471 U.S. 1 (1985) 10, 23, 24

Terry v. Ohio, 392 U.S. 1 (1968) 10, 13

The Case of Richard Curtis, 168 Eng. Rep. 67 (K.B. 1757) 21, 22, 23

United States v. Bonner, 874 F.2d 822 (D.C. Cir. 1989) 14

United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 10

United States v. Garcia, 983 F.2d 1160 (lst Cir. 1993) 15

United States v. Gervato, 474 F.2d 40 (3d Cir.), *cert. denied*, 414 U.S. 864 (1973) 18

United States v. Knapp, 1 F.3d 1026 (10th Cir. 1993) 18

United States v. Leon, 468 U.S. 897 (1984) 32, 33, 34

United States v. Lucht, 18 F.3d 541 (8th Cir.) *cert. denied*, 115 S. Ct. 363 (1994) 14

United States v. Martinez-Fuerte, 428 U.S. 543 (1976) 10

United States v. Maxwell, 25 F.3d 1389 (8th Cir.), *cert. denied*, 115 S. Ct. 610 (1994) 29

United States v. Moland, 996 F.2d 259 (10th Cir. 1993), *cert. denied*, 114 S. Ct. 722 (1994) 33

United States v. Payne, 805 F.2d 1062 (D.C. Cir. 1986) 12

United States v. Price, 441 F. Supp. 814 (E.D. Ark. 1977) 34

United States v. Singer, 943 F.2d 758 (7th Cir. 1991) 29

United States v. Spriggs, 996 F.2d 320 (D.C. Cir.), *cert. denied*, 114 S. Ct. 359 (1993) 15

United States v. Streeter, 907 F.2d 781 (8th Cir. 1990), *overruled on other grounds, United States v. Wise*, 976 F. 2d 393 (8th Cir. 1992) 16

United States v. United States District Court, 407 U.S. 297 (1972) 9

United States v. Villamonte-Marquez, 462 U.S. 579 (1983) 9, 10

United States v. Watson, 423 U.S. 411 (1976) 23, 24

United States v. X-Citement Video, Inc., 115 S. Ct. 464 (1994) 27

Waugh v. State, 3 Md. App. 379, 239 A.2d 596 (1968) 4b

Zurcher v. Stanford Daily, 436 U.S. 547 (1979) 9

CONSTITUTIONAL PROVISIONS AND STATUTES

18 U.S.C § 3109 (1988) 15, 32, 34

725 I.L.C.S. 5/108-8(b) (West 1994) 3b

Ark. Code Ann. § 16-81-107(c) (1987) 33

Ark. Code Ann. § 5-2-607(b)(1)(Repl. 1993) 17

Ark. Code Ann. § 5-2-620(b) (Repl. 1993). 17

Arkansas Rule of Criminal Procedure 13.3 (1994) 1, 13, 1a, 2a

Fourteenth Amendment to the United States Constitution ... 7

Fourth Amendment to the United States Constitution ..... *passim*

Miss. Code Ann. § 41-29-157(c) (1993) 5b

N.Y. Crim. Proc. L. § 690.35(3)(b) (West 1995) 7b

Neb. Rev. Stat. § 29-411 (1993) 6b

S.D.C.L. § 23A-35-9 (1994) 8b

Utah Code Ann. § 77-23-210(2) (Michie 1994) 9b

OTHER AUTHORITIES

D. Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776* (1976) 23

Federal Bureau of Investigation, Uniform Crime Reporting Program, *Law Enforcement Officers Killed and Assaulted* (1980-1993) 14

I. McKenzie, *Behind the Uniform: Policing in Britain and America* (1989) 20

J. Kent, *The English Village Constable 1580-1642* (1986) 23

M. Sonnenreich & S. Ebner, *No-Knock and Nonsense, An Alleged Constitutional Problem*, 44 St. John's L.Rev. 626 (1970) 20, 21, 22, 23

Note, D. Allegro, *Police Tactics, Drug Trafficking, and Gang Violence: Why the No-Knock Warrant Is an Idea Whose Time Has Come*, 64 Notre Dame L.Rev. 552 (1989) 12

R. Blakey, *The Rule of Announcement and Unlawful Entry: Miller v. United States and Ker v. California*, 112 U. Penn. L.Rev. 499 (1964) 20

W. Murfree, *A Treatise on the Law of Sheriffs and Other Ministerial Officers* (lst. ed. 1884) 22

No. 94-5707

In The Supreme Court of the United States
OCTOBER TERM, 1994

SHARLENE WILSON — PETITIONER

V.

STATE OF ARKANSAS — RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

BRIEF FOR THE RESPONDENT

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Arkansas Rule of Criminal Procedure 13.3 (1994), governing the execution of search warrants, is reprinted in Appendix A.

STATEMENT OF THE CASE

Officer Henry Efird of the Seventh Judicial Drug Task Force began conducting surveillance of petitioner Sharlene Wilson's house in late 1992. (J.A. 33-36) Officer Efird suspected petitioner and Bryson Jacobs, petitioner's soon-to-be husband, were trafficking in drugs. (J.A. 36) As part of this investigation, Officer Efird enlisted a confidential informant to purchase drugs from petitioner and Mr. Jacobs. On November 22, 1992, the confidential informant purchased marijuana from petitioner at the house she shared with Mr. Jacobs. (R. 338-39) On the following day, the confidential informant again went to petitioner's house and purchased methamphetamine from her. (R. 339) On December 30, 1992, the confidential informant again arranged to purchase marijuana from petitioner, this time in a convenience store parking lot. (R. 341-43) As the two sat in petitioner's truck, petitioner brandished a pistol and threatened to shoot the informant if she discovered the informant was working for the police. (R. 342-43, 355) Despite this threat, petitioner sold the informant the marijuana. (R. 355)

The day after petitioner threatened the confidential informant, Officer Efird sought a warrant to search petitioner's house. (J.A. 32-33, 50-52) When applying for the warrant, Officer Efird informed the judge of the threat and the three drug transactions. (J.A. 50-51) Circuit Judge John Cole then found probable cause to issue the warrant which authorized law-enforcement officers to search petitioner's house for illegal narcotics and "a small caliber pearl handled weapon used in the commission of the sale of a controlled substance." (J.A. 46)

Law-enforcement officers went to petitioner's house to execute the search warrant at around 5 p.m. on December 31, 1992. (J.A. 41, 49) Officer Roger Walls, warrant in hand, was the first or second officer to approach petitioner's house. (J.A.

40, 41) A uniformed officer accompanied him. (J.A. 40-41) As the officers approached, Bryson Jacobs called out, "It's the police." (R. 417)[1] When Officer Walls reached the porch, he noticed that the main door was open, with only a screen door separating him from the occupants of the living room, including Bryson Jacobs, whom he could see through the door. (J.A. 41) Officer Walls and the other officer then opened the screen door and, while walking into the house, identified themselves as police officers and told the occupants of the house that they had a search warrant. (J.A. 41) Officer Efird, who helped execute the warrant, stated that the officers did not have their weapons drawn. (J.A. 39)

When the police officers entered the house, they found petitioner in the bathroom with "the commode running[.]" (R. 233) By her own admission, petitioner had flushed marijuana down the commode. (J.A. 39, 68, 70) Mr. Jacobs, petitioner's minor son, and two friends of petitioner were also in the house. (R. 373) During their search of the house, the officers found a loaded Raven .25 caliber semi-automatic pistol in the living room -- the weapon specified in the warrant and which the confidential informant identified as being the one with which petitioner threatened her. (R. 367, 343) The officers also discovered marijuana, methamphetamine, hydromorphone, and various items of drug paraphernalia. (R. 274, 268, 365, 301, 368-70) The police then arrested both petitioner and Bryson Jacobs.

As a result of these various activities, the State charged petitioner with three counts of delivery of a controlled substance,

---

[1]Ricky Cate, petitioner's eleven-year-old son testified that he "heard somebody pull up, and . . . said, 'Somebody's here.'" (R. 417) At that point, he stated that Bryson Jacobs said "real loud[,]" "It's the police." (R. 417) The record does not reveal, however, whether the officers executing the warrant knew Bryson Jacobs was aware of their arrival.

two counts of possession of a controlled substance with intent to deliver, one count of terroristic threatening, and one count of possession of drug paraphernalia. (J.A. 5-6, 10-11, 13-14) Before her trial on these charges, petitioner moved to suppress the evidence seized in the search of her house on December 31, 1992. (J.A. 17-18) Among other reasons, petitioner claimed that the evidence should have been suppressed because the police officers failed to knock and announce their identity and purpose before entering her house to execute the warrant. (J.A. 17-18, 30-31) After hearing testimony from various police officers and the petitioner, the court denied the motion. (J.A. 45) Petitioner then proceeded to a jury trial at which she was convicted of delivering methamphetamine on November 22, 1992, delivering marijuana on November 23, 1992, and possessing the drug paraphernalia and marijuana found in her house on December 31, 1992. (J.A. 24-25) The trial court sentenced her to a total of thirty-one years' imprisonment and an $11,000 fine. (J.A. 25-26)[2]

In an opinion issued on July 11, 1994, the Arkansas Supreme Court affirmed all four of petitioner's convictions. (J.A. 72) The Court rejected petitioner's claim that the police officers' failure to knock and announce before entering her house pursuant to a search warrant violated her rights under either the Fourth Amendment or the Arkansas Rules of Criminal Procedure. (J.A. 77) In rejecting the Fourth-Amendment claim, the Court stated that "[t]here is no authority for Ms. Wilson's theory that the knock and announce principle is required by the Fourth Amendment." (J.A. 77) The Court relied upon existing Arkansas case law for its holding that Arkansas Rule of Criminal

---

[2]Only petitioner's convictions for possessing marijuana and drug paraphernalia stemmed from the search challenged here. Those convictions resulted in one year's imprisonment and a total fine of $11,000. (J.A. 25, 26)

Procedure 13.3, governing the execution of search warrants, also contained no such requirement. (J.A. 77)

SUMMARY OF THE ARGUMENT

Neither the text of the Fourth Amendment nor the Court's jurisprudence requires police officers to knock and announce before executing a valid search warrant. The Fourth Amendment to the United States Constitution commands that a neutral, disinterested magistrate approve a request and grant the authority for the government to invade an individual's reasonable expectation of privacy from official intrusion. Once the requirements of the Warrant Clause are met, governmental officers carry out the specific commands of the search warrant, and the details of execution are not outlined by the Constitution.

Rather, the Fourth Amendment provides that searches be reasonable. In deciding whether a particular police practice is reasonable, this Court has weighed the privacy interests asserted against the government's interests. The presence of a valid search warrant is highly relevant to the reasonableness inquiry and its constitutionally established criteria inform whether the manner of the search warrant's execution is reasonable.

Police officers called upon to carry out the command of the search warrant have a substantial interest in doing so free from unnecessary risks. The police in this case are compelled by the announced policy of the State that warrants be executed in all practicable safety -- a manner which allows police officers to exercise on-the-scene judgment in obtaining control of the place to be searched, its occupants, and the evidence which is the object of the warrant. This policy protects suspects and innocent bystanders as well as the police in furtherance of another important public interest: the prompt and efficient collection of evidence leading to the fair administration of justice.

Petitioner asserts that a knock-and-announce requirement will better protect her privacy interest, the safety of those at the scene, and her personal property. These assertions are greatly overstated. Her privacy interest lasts but a few seconds. Her purported ability to protect the safety of third parties are illusory; in fact, petitioner's rule may lead to greater risk of injury. Finally, her property interest, compared to what is at stake, is minimal. At bottom, the rule she proposes will not advance the interests she asserts. The balance shows that her *per se* rule is not constitutionally required.

Petitioner disregards the balance of competing interests and advances a wooden application of an alleged common-law practice: if the common law required knock and announce, it is constitutionally compelled. In so doing, petitioner ignores subsequent technological advances that would defeat the very purpose of the rule and slights the reality of its widely recognized exceptions. It is one thing to say that violence was averted by such a rule in an era without professional law-enforcement agencies, but quite another to elevate that rule to a constitutional prescription.

Should the Court nevertheless require police officers to knock and announce before executing a search warrant in some cases, there was plainly no such requirement on these facts. The occupants were aware of the police presence prior to their entry and contemporaneous with their entry the officers announced their authority and purpose. None of the evils petitioner warns of were present: the occupants were aware of the officers before they entered, uniformed officers were present, no guns were drawn, and no property was damaged by the entry.

Even if a rigid rule is required, this case falls within two of the most widely recognized exceptions: the target of the warrant was easily disposable narcotics and a weapon which the petitioner was known to have menacingly brandished presented the possibility of violence.

Should the Court nevertheless conclude that the peaceful entry in this case to execute a valid search warrant transgressed the Reasonableness Clause, the exclusionary rule does not apply generally or specifically. The principles of deterrence are not served by exclusion of evidence in cases where the illegal conduct of the police does not produce an advantage for the state in its prosecution of crime. And even should such an advantage exist, exclusion is inappropriate in this case when the officers executed the search warrant in reasonable reliance on state law.

ARGUMENT

I. THE FOURTH AMENDMENT DOES NOT REQUIRE LAW-ENFORCEMENT OFFICERS TO KNOCK AND ANNOUNCE BEFORE EXECUTING A SEARCH WARRANT.

The Court has never held that the Fourth Amendment to the United States Constitution requires law-enforcement officers to knock and announce their authority and presence before executing a valid search warrant.[3] In *Miller v. United States*, 357 U.S. 301 (1958), and *Sabbath v. United States*, 391 U.S. 585 (1968), the Court held that a federal statute was violated by officers who made unannounced, warrantless entries into dwellings to arrest suspects. Neither case presented a Fourth-Amendment question. In *Ker v. California*, 374 U.S. 23 (1963), a plurality of the Court concluded that the judicially crafted exigent-circumstances exception to California's knock-and-announce statute was not unreasonable under the Fourth Amendment. The Court did not decide in the first instance, how-

---

[3]The Fourth Amendment applies to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961).

ever, whether knock and announce itself was required by the Fourth Amendment, particularly in circumstances like this case in which officers are armed with a valid warrant.

Neither Fourth-Amendment text and precedent nor history supports the petitioner's view that the Constitution prescribes a rule of knock and announce prior to entry by the State to execute a valid search warrant. At the risk of stating the obvious, had a rigid constitutional mandate like the one petitioner proposes been intended by the drafters, one might expect to find mention of it in the text of the Fourth Amendment. One, of course, does not. Petitioner does not explicitly argue that the requirement is found in the Warrant Clause, where it should logically be, and her efforts to wring such a requirement from the Reasonableness Clause are unavailing.

A. The Warrant Clause Does Not Require Law-Enforcement Officers To Knock And Announce Before Executing A Search Warrant.

Petitioner does not plainly argue that the Warrant Clause of the Fourth Amendment requires police officers to knock and announce their authority and purpose before executing a search warrant. Yet, if officers are required by the Constitution to knock and announce when they execute a search warrant, as petitioner claims, then one would likely find that requirement -- or at least its restrictive opposite, a prohibition on no-knock warrants -- in the Warrant Clause. Such a requirement or restriction, however, is neither contained in the Warrant Clause nor the Court's cases construing it.

The Warrant Clause of the Fourth Amendment to the United States Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Consistently with this plain language, the Court has held that the Warrant Clause requires only three things: 1) warrants must be issued by neutral, disinterested magistrates; 2) those seeking the warrant must demonstrate probable cause to believe that the evidence sought will aid a particular apprehension or conviction; and 3) warrants must describe with particularity the things to be searched and seized. *Dalia v. United States*, 441 U.S. 238, 255 (1979). Limited to these three requirements, the Warrant Clause does not dictate the manner in which warrants are to be executed. Thus, in *Dalia* itself, the Court stated that "it is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant[.]" *Id.*, at 257 (footnote omitted). The Warrant Clause's failure to require knocking and announcing should preclude adoption of the practice as a constitutional rule.

B. The Reasonableness Clause Does Not Require Law-Enforcement Officers To Knock And Announce Before Executing A Search Warrant.

While the general requirements of reasonableness apply to the manner of the execution of a warrant, *e.g.*, *Zurcher v. Stanford Daily*, 436 U.S. 547, 559-60 (1979), the reasonableness of a search generally turns on whether it was conducted pursuant to a valid warrant and what was required by that warrant. *See United States v. United States District Court*, 407 U.S. 297, 309-10, 314-15 (1972); *see also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 328 (1978)(Stevens, J., dissenting). In deciding whether a *particular* police practice is reasonable, however, the Court has repeatedly said that the importance of the public interests must be weighed against the nature of the intrusion upon Fourth-Amendment rights. *E.g.*, *Maryland v. Buie*, 494 U.S. 325, 332 (1990); *Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602, 619 (1989); *United States v.*

Villamonte-Marquez, 462 U.S. 579, 588 (1983); *Delaware v. Prouse*, 440 U.S. 648, 654 (1979); *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977)(per curiam); *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968). Indeed, the Court has stated that the balancing of these competing interests is "the key principle of the Fourth Amendment." *Tennessee v. Garner*, 471 U.S. 1, 8 (1985) (citation and quotation omitted). A balancing of the interests here clearly dictates against the adoption of a rigid rule requiring police officers to knock and announce their presence before executing a warrant.

1. A Balancing Of The State And Private Interests At Stake Does Not Require Knock And Announce To Precede Execution Of A Search Warrant As A Matter Of Fourth-Amendment Law.

By the time a search warrant is to be executed, the balance has already been struck in the State's favor: the substantial privacy interests of the citizen have been weighed against the Fourth Amendment's Warrant-Clause requirements. The remaining interest of the citizen, whatever it is, does not require law-enforcement officers who are executing the warrant to knock and announce to guarantee that the State's execution of the warrant will be reasonable.

On the public-interest side of the scales, law-enforcement officers have a substantial interest in being able to secure the site so it may be searched promptly, efficiently, and safely. This interest militates against adopting a rule requiring them to knock and announce their purpose and authority before execution because warrants direct police officers to go into places unknown to them and, where, it is safe to say, they are not

welcome.[4] Their success in fulfilling the mandate to search for evidence and instrumentalities of crime depends on their ability to establish command of the scene and secure the safety of themselves, the occupants, if any, of the place to be searched, and bystanders.

Police officers face an unquantifiable risk of violence every time they go into a house to execute a search warrant. Indeed, the Court has recognized the unique danger police officers face in suspects' houses because the officers are coming onto their adversaries' "turf" which has a configuration unknown to the officers. *See Buie*, 494 U.S. at 333; *see also Mimms*, 434 U.S. at 110 (stating that the state's asserted interest in officer safety is "both legitimate and weighty"). As one commentator has noted, this risk is heightened by a knock-and-announce requirement:

> a police officer making a high-risk warrant entry is at a severe disadvantage. When he announces authority and purpose he makes himself readily identifiable. The suspect, concealed inside a house, will generally be able to see the officer, or know where the officer is since he is most often near the door. Even if the officer can see occupants inside the house, he does not know if they intend to resist unless they are naive enough to reveal their violent intentions. The officers are most vulnerable when entering the house. If the announcement has given the [suspect] time to arm himself, all he need do is aim his firearm at the door and wait for a target to appear.

---

[4] In this case, for example, petitioner had threatened to shoot the informant if she was working for the police.

Note, D. Allegro, *Police Tactics, Drug Trafficking, and Gang Violence: Why the No-Knock Warrant Is an Idea Whose Time Has Come,* 64 Notre Dame L.Rev. 552, 566 (1989)(footnotes omitted).[5]

In *Michigan v. Summers,* 452 U.S. 692, 702-03 (1981), the Court recognized that the "risk of harm to both police and the occupants [of an area subject to a search] is minimized if the officers routinely exercise unquestioned command of the situation." The sooner the officers have complete control of the situation, the less likely it is that any confrontation between suspects and officers will escalate to the point of gunfire. Minimizing this risk, in turn, ensures the safety not only of the officers, but also of suspects and of innocent bystanders or passers-by.

Officers need to control the scene immediately, not only for their own safety and the safety of others, but also to seize evidence. After all, a search warrant commands officers to go to a particular place to seize evidence. If officers must knock and announce their authority and presence, they provide the occupants of the house with the opportunity not only to arm themselves, but to dispose of the evidence -- particularly in cases involving drugs.[6] An individual has no constitutionally protected interest, however, to destroy the evidence or contraband. *See, e.g., Segura v. United States,* 468 U.S. 796, 816 (1984).

---

[5]The risk of violence is even greater where, as in this case, the search involves drugs and weapons. *See United States v. Payne,* 805 F.2d 1062, 1065-66 (D.C. Cir. 1986)(per curiam)(recognizing the high correlation between drug trafficking and the presence of firearms and collecting cases).

[6]In this case, for example, petitioner admitted she was flushing the evidence (drugs) down the toilet presumably after receiving notice of the arrival of the police from Mr. Jacobs.

Taking command of the situation is thus vital to the safe and effective execution of a search warrant. Officers executing a warrant are in the best position to decide how to take command of the situation and whether knocking and announcing will hinder or help their ability to do so in a particular case. In some cases police officers will undoubtedly decide that their safety, the safety of others, and the effective execution of the warrant dictate that they knock and announce; in other cases, they will decide that such a procedure would be counterproductive or even dangerous. The Court has previously decided that it is constitutionally reasonable to allow officers in the field to decide what course of action to pursue instead of requiring them to "take unnecessary risks[.]" *Terry,* 392 U.S. at 23-24; *see also Graham v. Connor,* 490 U.S. 386, 396-97 (1989)(stating that the "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments . . . in circumstances that are tense, uncertain, and rapidly evolving"). The avoidance of such risks is the overriding concern of the Arkansas Rule of Criminal Procedure governing the execution of warrants, even without a knock-and-announce requirement.[7]

---

[7]Arkansas Rule of Criminal Procedure 13.3(a) (1994) provides that search warrants shall be executed with "all practicable safety." Under subsection (b) of the Rule, the officer executing a search warrant must "as soon as is practicable, state his authority and purpose and furnish a copy of the warrant[]" to the person in apparent control of the premises. Under Rule 13.3 officers are required to announce their authority, but they do not have to so before entry in every case. The Rule, which the officers complied with here, strikes the appropriate balance by allowing the officers at the scene, the ones whose lives are at stake, to decide what is practicable in any given situation.

Federal Bureau of Investigation statistics bear out that Arkansas' procedures maximize officer safety. From 1980 to 1993,

Adoption of the rule petitioner advocates would not eliminate officers' discretion in the field -- the allegedly chief evil against which the rule is directed. *See* Brief of *Amicus Curiae* American Civil Liberties Union at 14-15 (ACLU Br.). Even petitioner's own formulation of the rule provides that it can be ignored under exigent circumstances. Petitioner's Brief at 63 (Pet. Br.). Thus, the officers executing the warrant will still have to decide whether a particular exigency exists.[8] Only an officer at the scene can determine, for example, whether knocking and announcing in a particular case will be a "useless gesture." *See* Pet. Br. at 63. Under petitioner's rule, executing officers will still also have the discretion to decide when the occupants' failure to acknowledge their knock and announce becomes a constructive refusal, thus allowing them to enter forcibly in any event. *See, e.g., United States v. Lucht,* 18 F.3d 541, 549 (8th Cir.), *cert. denied,* 115 S. Ct. 363 (1994); *United States v. Bonner,* 874 F.2d 822, 824-26 (D.C. Cir. 1989).

Nor would adoption of petitioner's rule eliminate litigation of the knock-and-announce issue. The lower federal courts' ex-

---

no Arkansas police officers were killed investigating drug-related offenses or executing search warrants. Nationally, during this same time period, seventy-five officers were killed investigating narcotics offenses and sixteen were killed executing search warrants. Federal Bureau of Investigation, Uniform Crime Reporting Program, *Law Enforcement Officers Killed and Assaulted* (1980-1993)(data extracted from published annual reports for years 1980 through 1993).

[8]Petitioner does not advocate so-called "no-knock" warrants to eliminate this alleged problem nor could she reasonably do so. In *Dalia,* 441 U.S. at 257, the Court rejected the argument that warrants should dictate the method of entry -- leaving that decision to the officers executing the warrant.

perience with 18 U.S.C. § 3109 (1988) demonstrates that any holding by the Court that knock and announce is constitutionally required will not end the inquiry as to what officers must do when they reach the threshold of a door. Under § 3109, for example, courts regularly adjudicate the number of seconds officers must wait between knocking and announcing and entering when there has been no response to their notice. *See, e.g., United States v. Spriggs,* 996 F.2d 320, 323 (D.C. Cir.), *cert. denied,* 114 S. Ct. 359 (1993); *United States v. Garcia,* 983 F.2d 1160, 1168 (lst Cir. 1993). It is one thing for Congress to put federal courts in the position of deciding whether a federal statute requires police officers to wait more than fifteen seconds after knocking and announcing in a "louder than . . . normal voice . . . but not a yell" for the occupants of an apartment to emerge from the "far bedroom" between 7:30 and 7:45 a.m. on a weekday morning. *Spriggs,* 996 F.2d at 322 (quotations omitted). It is quite another for the Court to conclude that such an exercise is a matter of constitutional law, requiring each state to modify its practice accordingly, and creating new Fourth-Amendment claims in the lower federal courts.

Weighed against the public's substantial interests in law-enforcement officers' ability to secure the scene are petitioner's interests in having notice that a search warrant is about to be executed. Petitioner has identified three such interests: she claims that she has a privacy interest in keeping the police outside her house for a few seconds; that a knock-and-announce requirement will better protect the safety of those at the scene; and that there is less chance of property damage if the police are required to wait for admission into the house. Pet. Br. at 57-63. None of these interests, singly or in combination, is sufficient to elevate petitioner's interests over the public's interest in having police officers safely and effectively execute warrants.

Petitioner's privacy interests are only slightly advanced by

a knock-and-announce rule. Although petitioner correctly notes that people normally have the highest expectation of privacy in their houses, her arguments are largely beside the point. There is no dispute that within a matter of seconds after the police arrive with a warrant, they are entitled to enter petitioner's house, with or without permission, and conduct as long and as thorough search as they deem necessary. The search has been authorized by a neutral magistrate, and will occur *regardless* of whether the police knock and announce their presence. Thus, petitioner's arguments about "the sanctity of the home," Pet. Br. at 32, have little to do with the case at hand, because the disruption of her privacy interests are almost entirely attributable to the concedely valid warrant, not the unannounced entry. *See State v. Stevens,* 181 Wis.2d 410, _, 511 N.W.2d 591, 598 (1994), *petition for cert. filed* (U.S. No. 93-9026)(May 4, 1994); *see also Summers,* 452 U.S. at 703 (stating that when officers execute a search warrant "a neutral magistrate rather than an officer in the field has made the critical determination that the police should be given a special authorization to thrust themselves into the privacy of a home.") (footnote omitted). The only invasion of privacy about which petitioner may complain is the presence of the police in her house during the brief period that they would have been standing outside had they knocked and waited to be admitted.

Petitioner's interest in being able to exclude the police from her house between the time that they knock and the time they would be entitled to enter without consent is very limited. It is of limited duration: some jurisdictions with knock-and-announce rules have concluded that police can wait as little as five to ten seconds after knocking before they enter a house. *See, e.g., United States v. Streeter,* 907 F.2d 781, 788-89 (8th Cir. 1990), *overruled on other grounds, United States v. Wise,* 976 F.2d 393 (8th Cir. 1992)(en banc). Petitioner's privacy interest is also of limited scope, given the admittedly substantial privacy intrusion that will occur while the warrant is being executed. When these limited interests are compared to the substantial interests the police have in securing the scene of the search, the balance plainly tips in the State's favor.[9]

The petitioner's asserted safety interests also do not outweigh the State's interest in deciding on a case-by-case basis how best to enter to execute a search warrant. The bulk of petitioner's argument on this point is that a knock-and-announce rule will protect officers from her "right" to use violence against persons breaking into her home. Pet. Br. at 60-61.[10]

Petitioner's arguments about safety are flawed in two respects: First, they erroneously assume that a bright-line rule will lead to less violence than a rule that gives the police on the scene the discretion to decide in each case what approach will

---

[9]As for those cases in which the officers may go to the wrong house, the mistake is either redressable because the officers will have acted beyond the scope of the warrant or do not violate the Fourth Amendment in any event. *See Maryland v. Garrison,* 480 U.S. 79, 84-85 & 89 n.14 (1987).

[10]Petitioner has overstated state law on this point. The Arkansas Supreme Court has held that the presumption afforded by Ark. Code Ann. § 5-2-620(b) (Repl. 1993) "has no real effect," *Hopes v. State,* 294 Ark. 319, 323, 742 S.W.2d 561, 564 (1988), and does not legalize murder, *Doles v. State,* 280 Ark. 299, 300, 657 S.W.2d 538, 539 (1983). Thus, at most, petitioner does not have an obligation to retreat in her own home when she reasonably believes a person is using or is about to use unlawful deadly force against her. *See* Ark. Code Ann. § 5-2-607(b)(1)(Repl. 1993). This hardly gives her the unqualified right under Arkansas law to shoot police officers who are executing a valid search warrant.

result in the safest execution of the warrant.[11] The second flaw is that petitioner fails to recognize the substantial incentive the police have to execute warrants in a way that minimizes the potential for violence. In cases where the executing officers believe that their safety and the safety of others will be best protected by knocking and announcing, not only are they *free* to do so, logic dictates that they *will* do so. It does not take a leap of faith to conclude that police will take appropriate steps, including knocking and announcing when appropriate, to minimize the risk of being shot at; but it does take a leap of faith to believe that a *per se* rule of knock and announce will always be the safest way to execute a warrant.

And finally, petitioner claims she has property interests which are protected by a knock-and-announce rule. The facts of this very case show that the failure to knock and announce does not inherently lead to the destruction of property. The police officers did not destroy petitioner's door even though they also did not knock and announce -- they simply walked in through the unlocked screen door. The contrary of petitioner's argument here is equally plausible -- a knock-and-announce rule will not protect doors from destruction in every case. Householders who are not within at the time of the execution of the warrant will still have their doors opened by force. *E.g., United States v. Gervato,* 474 F.2d 40, 44 (3d Cir.), *cert. denied,* 414 U.S. 864 (1973). And, the case law under knock-and-announce statutes is replete with doors lawfully being forced open *after* the officers have knocked and announced. *E.g., United States v. Knapp,* 1 F.3d 1026, 1030-31 (10th Cir. 1993). Even in cases where the door is damaged because the police did not knock first, that minimal property interest pales in comparison to the

---

[11] Petitioner's sweeping assertion that officers are trained "to shoot first and ask questions later," Pet. Br. at 59, is unsupported by any factual or legal authority.

interest that the police and public have in the safe execution of warrants.

Thus, the petitioner's interests leave her on the lighter end of the scale on each point. Her privacy interest is small and ephemeral as opposed to the large invasion the deliberative warrant process approves. Her safety-interest claim defies common sense by suggesting that the public interest in the safe execution of warrants is best served by removing discretion from the officers on the scene. And her property-interest argument simply denies that with or without a knock-and-announce rule the executing officers may break the door, if necessary. The balance properly favors the State, and not surprisingly so, because it has started with a valid warrant and seeks only to execute it safely and effectively.

2. Any Common-Law Practice And State Practice Do Not Change The Constitutional Balance.

Petitioner's entire argument can be boiled down to the following: the common law required knock and announce and thus knock and announce is constitutionally compelled. The State disagrees with the petitioner's analysis of the common law. Even if she is correct, however, the Court is not required to adopt a rigid rule fashioned in, as petitioner claims, the year 1275.

Petitioner bases her argument on *Semayne's Case,* 77 Eng. Rep. 194 (K.B. 1603), and reads it as requiring announcement in all cases, including those involving the execution of a modern-day search warrant. Yet, the service by a sheriff of a civil writ -- the facts of *Semayne's Case* -- bears little resemblance to the execution of a modern-day search warrant for evidence of a crime issued by a neutral magistrate, based upon probable cause, specifying with particularity the area to be

searched.[12] *Semayne's Case* comes closer to resembling a modern-day civil action in which the aid of a sheriff is enlisted to repossess personal property pursuant to a court order. *Semayne's Case* does not support knock and announce outside the civil context.

Even if *Semayne's Case* were universal in its application, the case is unclear about what it requires in any event. An examination of the language of *Semayne's Case* suggests that the practice for which petitioner relies upon it was more prescriptive than descriptive. Just like the Arkansas Rules, the case declares the desirability of announcing the intention of serving the writ: "he *ought* to signify the cause of his coming, and make request to open doors...." *Id.*, at 195 (emphasis added). One intended purpose of this language was to admonish constables serving process to announce their purpose and authority, lest they be mistaken for trespassers. *Id.*, at 196; *see also* M. Sonnenreich & S. Ebner, *No-Knock and Nonsense, An Alleged Constitutional Problem*, 44 St. John's L.Rev. 626, 647 (1970)(stating that the purpose of the rule was to avoid the potential for violence).[13] At any rate, this language is merely "precatory" and says nothing which would indicate that the

---

[12]One commentator has stated that search warrants were not even known at early common law and that it was never judicially settled whether the rule of announcement applied to them. R. Blakey, *The Rule of Announcement and Unlawful Entry: Miller v. United States and Ker v. California*, 112 U. Penn. L.Rev. 499, 503 (1964).

[13]At common law, constables apparently bore little outward sign of their authority. *Cf.* I. McKenzie, *Behind the Uniform: Policing in Britain and America* 15-20 (1989) (stating that London police officers, members of the first organized police force, did not wear uniforms until 1791).

service made after the illegal entry was rendered invalid as a result of the entry -- the proposition for which petitioner advances it. *See* M. Sonnenreich & S. Ebner, 44 St. John's L.Rev. at 628-29.[14]

The tenuous foundation for petitioner's rule provided by *Semayne's Case* is hardly bolstered by the poor example of the rule's operation found in *The Case of Richard Curtis*, 168 Eng. Rep. 67 (K.B. 1757). Curtis had originally been at Cowling's workshop where an officer attempted to execute process on Cowling, but with the aid of Curtis, Cowling escaped. The officer then sought an additional escape warrant together with more officers and, upon their return to Cowling's workshop, they made known to those inside their intention to arrest Cowling.[15] Curtis stuck his head out the window and swore "that the first man that entered should be a dead man." *Id.* at 67. He carried out his threat and was charged with "wilful murder." The discussion of the rule of announcement explained to what extent the announcement put Curtis on notice so that he formed the necessary intent to commit the crime. The irony of relying on *Curtis's Case* for a modern-day rule of announcement is that the rule did not work in the case (or worked too well) -- the officer announced his presence and was murdered. Such a result is hardly a resounding endorsement for raising the rule to a constitutional commandment.

---

[14]A constable who violated the rule may well have been liable for trespass. That is a far cry, however, from petitioner's claim that the process the constable was seeking to serve should be rendered invalid for the failure to knock and announce. *Cf. Oliver v. United States*, 466 U.S. 170, 183-84 & n.15 (1984) (explaining that the law of trespass provides broader protection than the Fourth Amendment).

[15]It is unclear whether the warrant was for a felony.

To the extent that *Semayne's Case* and *Curtis's Case* may suggest a knock-and-announce rule, they do not squarely settle the application of the rule to criminal cases, particularly felony cases. In fact, later decisions reflect a reluctance to extend the rule to such cases. In *Ratcliffe v. Burton*, 3 Bos. & Pul. 223, 127 Eng. Rep. 123 (C.P. 1802), for example, two of the four opinions explicitly stated that any observations about a knock-and-announce requirement were limited to civil cases "without in any degree extending them to the case of criminal process." *Id.*, 3 Bos. & Pol. at 229, 127 Eng. Rep. at 126 (C.J., Lord Alvanley); *see also id.*, 3 Bos. & Pol. at 230, 127 Eng. Rep. at 127 (J., Rooke)("Without referring at all to the case of criminal process . . .").[16] In *Launock v. Brown*, 2 Barn. & Ald. 592, 593, 106 Eng. Rep. 482, 483 (K.B. 1819), Chief Justice Abbott stated that "[it] is not at present necessary for us to decide how far, in the case of a person charged with felony, it would be necessary to make a previous demand of admittance before you could justify breaking open the outer door of his house[.]" *See also* W. Murfree, *A Treatise on the Law of Sheriffs and Other Ministerial Officers* § 1163, at 631 (lst. ed. 1884)(explaining that while there is some doubt, the "better opinion" is that both the English and American rule require "no demand of admittance" in felony cases).

As this discussion of the common-law rule of knock and announce reveals, the rule was, at most, ambiguous. It would be improper for the Court to rely upon the common law as the source of a rigid and fixed rule when it is not entirely clear that the rule was, in fact, so rigid and fixed as actually applied at the common law. To do so would "create . . . a constitutional certainty from a common-law uncertainty." M. Sonnenreich & S.

---

[16]The other two opinions did not address the precise question or resolve the issue. *Id.*, 3 Bos. & Pol. at 229-31, 127 Eng. Rep. at 126-27.

Ebner, 44 St. John's L.Rev. at 646.

Even if the common law were as clear and true as petitioner claims, it would not dictate a rigid constitutional rule today. The Court has cautioned against using mechanical rules as the test for reasonableness. *See Bell v. Wolfish*, 441 U.S. 520, 559 (1979). While the Court has found the common law instructive in determining whether a particular practice is reasonable under the Fourth Amendment, *see, e.g. United States v. Watson*, 423 U.S. 411, 418-19 (1976); *Carroll v. United States*, 267 U.S. 132, 149-53 (1925), it has refused to freeze "into constitutional law those law enforcement practices that existed at the time of the Fourth Amendment's passage." *Payton v. New York*, 445 U.S. 573, 591 n.33 (1980); *see also Garner*, 471 U.S. at 13.

In this particular context, freezing constitutional law into the common-law mold would be particularly inappropriate. As the State has already explained, one purpose of the rule in *Semayne's Case* was to protect officers serving process from being mistaken for trespassers. Such a rule may have been necessary in an era in which the constables charged with serving process were part-time, did not wear uniforms, and were often untrained, reluctant citizens from the local community. *See generally* J. Kent, *The English Village Constable 1580-1642* 57-59, 72-79, 139, 220 (1986); *see also* D. Greenberg, *Crime and Law Enforcement in the Colony of New York 1691-1776* 158, 163-65 (1976). A common-law rule which usually protected unwary citizen process servers -- *Curtis's Case* notwithstanding -- hardly seems constitutionally compelled to protect professional police forces today, and in fact, is ill-advised where, as the State has demonstrated above, the rule will actually do more harm than good.

Technological changes also indicate that the knock-and-announce rule may have outlived its usefulness. *See Garner*, 471 U.S. at 13 (stating that relying on the common-law rule would be a mistake in light of "sweeping change in the

legal and technological context[]"). In *Garner,* 471 U.S. at 15-16, for example, the Court recognized that weapons were rudimentary at the time of the common law and most combat was hand-to-hand. In the era in which the common-law rule was developing, the threat of rapid loading and firing weapons was unknown, making it less likely that advance notice of the search would result in deadly violence. Thus, in that era, knock and announce may have been more reasonable. Adhering to a common-law rule fashioned in an era without such weapons, however, seems particularly inappropriate -- if not folly -- in light of today's weaponry. Technological changes are relevant to determining whether a particular practice *is* reasonable, even when considering the Fourth Amendment in light of what *was* reasonable at the time of its adoption. *See Minnesota v. Dickerson,* 113 S. Ct. 2130, 2140-41 (1993) (Scalia, J., concurring).

Finally, the fact that a large number of states require knock and announce as a matter of state law does not mean the Court must elevate such a rule to a constitutional mandate. While the Court has looked to the prevailing rule in individual jurisdictions to determine what is reasonable for Fourth-Amendment purposes, *e.g., Watson,* 423 U.S. at 421-22, the Court has also said, however, that "[t]he States are not . . . precluded from developing workable rules governing arrests, searches and seizures to meet the practical demands of effective criminal investigation and law enforcement in the States[.]" *Ker,* 374 U.S at 34 (plurality opinion). States are free to regulate their own law-enforcement efforts beyond what the Fourth Amendment requires to protect individual rights. That Arkansas' practice is different from the practice of other states is only the genius of federalism. *See id.,* at 31 (plurality opinion) (stating that application of the Fourth Amendment to the states "sounded no death knell for our federalism"). At any rate, many of the states requiring knock and announce appear to do so because it was

required at common law. *See, e.g, State v. Bamber,* 630 So.2d 1048, 1053 (Fla. 1994); *Commonwealth v. Goggin,* 412 Mass. 200, 202, 587 N.E.2d 785, 787 (1992). And, as petitioner concedes, Pet. Br. at 63-64, and the State argues, *infra* at II.B., exigent circumstances are a nearly universal exception to any rule. It is at least arguable that the states' practices show that these exceptions have swallowed the rule. *See* State App. B. Consequently, on the whole, the practice of a majority of the states does not provide any additional insight into what is constitutionally reasonable and required in this context.

Rather, the inquiry should end where it began: whether the *Fourth Amendment* requires petitioner's suggested rule. Without support in the text or in constitutional decisionmaking under either clause of the Fourth Amendment, and with only ambiguous historical and undifferentiated state-practice support, it cannot be said that petitioner's rule is constitutionally compelled.

II. ASSUMING THAT THE FOURTH AMENDMENT REQUIRES LAW ENFORCEMENT OFFICERS TO KNOCK AND ANNOUNCE BEFORE EXECUTING A SEARCH WARRANT IN SOME CASES, THE POLICE OFFICERS' FAILURE TO DO SO IN THIS CASE WAS REASONABLE.

Even if the Fourth Amendment requires the police to knock and announce in some cases for a search to be considered reasonable, there was no such requirement in this case. Under any plausible interpretation of a requirement, the police acted properly in entering petitioner's house as they did. Moreover, there were exigent circumstances that would have justified the failure to comply with any knock-and-announce requirement.

A. The Failure To Knock And Announce Was Not Unreasonable.

The reasonableness of the behavior of the officers in this case is plain in contrast to the interests a knock-and-announce rule is said to protect: privacy, safety of the officers and occupants, and protection against property damage. The execution of the search warrant took place around 5 p.m. on a Thursday afternoon. (J.A. 41, 49) The first two officers to approach the house, one of whom was uniformed (J.A. 41), were visible to any occupants who were looking, as apparently Bryson Jacobs was when he called out "It's the police." (R. 417) The main door was open, and the officers could see inside through a screen door. (J.A. 41) They saw Mr. Jacobs and others and then simply walked into the house, announcing their identity and purpose as they entered. (J.A. 41) Their guns were not drawn (J.A. 39, Pet. Br. at 65), and they used no force that might have startled the occupants (who had either seen them or heard of their arrival) or that might have damaged any property.

Thus, the occupants' privacy was not unreasonably invaded because they saw the officers coming to the open door, the officers made an announcement of identity and authority to search as they walked into the house, and the occupants could not have denied the officers entry. The threat of physical harm due to surprise and alarm was no greater without a knock and announce by the officers than it would have been with one. In addition, the officers did not have their guns drawn or otherwise approach in a manner that might have caused one of the occupants (who was not already so disposed) to reach for a weapon in a panic. Finally, the failure to knock and announce did not result in damage to petitioner's property as the officers entered. Whatever the Reasonableness Clause requires with respect to executing warrants, it can hardly

be said that the officers' entry here was unreasonable.[17]

B. Exigent Circumstances Excused The Failure To Knock And Announce.

Ironically, even under petitioner's extreme view of the Fourth Amendment, the entry in this case would have been upheld, because she concedes, as she must, that a Fourth-Amendment rule would include exceptions for exigent circumstances. Pet. Br. at 63; *see Sabbath*, 391 U.S. at 591 n. 8; *Ker*, 374 U.S. at 39-41 (plurality opinion); *id.* at 47 (Brennan, J., dissenting in part).[18] These exceptions are widely recognized in jurisdic-

---

[17] As the State has argued, *supra* at n.7, because the Arkansas Rules of Criminal Procedure require an announcement of purpose consistent with execution with all practicable safety, Arkansas law embodies the Fourth Amendment's reasonableness requirement even without a knock-and-announce requirement in all searches. As in *Ker*, the Court can conclude "the officers' method of entry, sanctioned by the law of [Arkansas] was not unreasonable under the standards of the Fourth Amendment." *Ker*, 374 U.S. at 40-41 (plurality opinion).

[18] The exceptions conceded by petitioner are similar to the three described by Justice Brennan in *Ker:* 1) useless gesture, 2) destruction of evidence, and 3) apprehension of peril. Pet. Br. at 63. While petitioner has suggested that the State's failure to raise exigent circumstances in the Arkansas courts precludes it from making the case for them in this Court, Pet. Br. at 64-65, it is well settled that the prevailing party may raise any ground to lend support to the judgment below which is supported by the record. *See, e.g, United States v. X-Citement Video, Inc.*, 115 S. Ct. 464, 472 (1994); *Dandridge v. Williams*, 397 U.S. 471, 475 n. 6 (1970).

tions that impose a knock-and-announce rule. *See* State Br. App. B (collecting statute and case authority on exceptions for exigent circumstances). And the State agrees with petitioner's statement that they are recognized by every authority and all state and federal courts. Pet. Br. at 63.

At least two of the most widely recognized exigent circumstances were present in this case: the potential for the destruction of evidence of crime and the potential for harm. The primary reason for the warrant in this case was to search for drugs and a gun. Petitioner was the subject of a narcotics investigation which included the use of a confidential informant to purchase drugs from her. (J.A. 36) During the investigation, the police learned that, in addition to selling drugs to the informant, petitioner -- by threatening the informant with a handgun -- was apparently ready to use deadly force to prevent her apprehension. (R. 342-43, 355) On this information, the police would have been justified in concluding that advanced notice of their entry would have increased the risk of violence and the destruction of evidence -- at least the latter of which was confirmed when the police entered and found petitioner flushing marijuana down the commode. (J.A. 39, 68, 70)[19]

[19]Petitioner suggests that because the officers did not have their guns drawn when they entered that they did not have a fear of any harm. Pet. Br. at 65. The flaw in petitioner's reasoning is that she assumes the police would not have drawn their guns had they been required to knock and announce. However, it is at least equally plausible that the police did not draw their weapons because they quickly entered once they saw the open door in order to secure the scene and avoid the panic of a guns-drawn rush of the house. In any event, the officers' subjective state of mind is irrelevant, as the Fourth Amendment inquiry makes an objective assessment of the officers' actions. *See Scott v. United States*, 436 U.S. 128, 136-38 (1978).

Under these circumstances, the entry likely would not have violated the current knock-and-announce rules of many jurisdictions. *See, e.g., United States v. Maxwell*, 25 F.3d 1389, 1395 (8th Cir.), *cert. denied*, 115 S. Ct. 610 (1994); *United States v. Singer*, 943 F.2d 758, 762 (7th Cir. 1991); *Stevens*, 181 Wis. 2d at _, 511 N.W.2d at 596 (listing state cases applying blanket drug exception); *see also* State Br. App. B. The scope of any exigent circumstances under a Fourth-Amendment rule is, of course, unclear, as no such constitutional rule currently exists. Nevertheless, while the contours of such a rule and its exceptions might have to await further constitutional adjudication, at a minimum, the exigent circumstances of destruction of evidence and threats to safety in this case would excuse compliance with any Fourth-Amendment rule.

III. ASSUMING THAT THE POLICE OFFICERS' FAILURE TO KNOCK AND ANNOUNCE WAS UNREASONABLE UNDER THE FOURTH AMENDMENT, THE EXCLUSIONARY RULE DOES NOT REQUIRE THE SUPPRESSION OF THE EVIDENCE SEIZED IN THIS CASE.

Even if the Court concludes that a constitutional violation has occurred, the Fourth Amendment's exclusionary rule does not require suppression in this case for at least two reasons. First, the evidence seized was not the product of the failure to knock and announce, and, second, the officers acted in good-faith reliance on settled state law that the police are not required to knock and announce before executing a search warrant.

A. The Failure To Knock And Announce Is Not An Illegal But-For Cause For The Discovery Of Evidence Under A Proper Search Warrant Which Mandates Exclusion To Enforce The Fourth Amendment.

Before evidence is excluded from a criminal trial because of allegedly illegal government conduct, the courts must ask "whether the challenged evidence was come at by exploitation of the initial illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Segura*, 468 U.S. at 804-05 (internal quotation marks, brackets, citation, and emphasis omitted). Where the failure to knock and announce is the purportedly illegal conduct and the evidence is seized subject to a valid warrant, the evidence never comes by exploitation of the illegality and is always by a means (a valid warrant) patently distinguishable from the illegality so as to bear no taint that would require exclusion.

The Court has given effect to these principles through the inevitable-discovery doctrine.[20] In *Nix v. Williams*, 467 U.S. 431, 443-44 (1984), the Court reasoned that while the exclusionary rule was designed to ensure that the prosecution did not *benefit* from illegal police conduct, its application should not put the prosecution in a *worse* position than if no misconduct had occurred. Thus, "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by a lawful means . . . then the deterrence rationale has so little basis that the evi-

---

[20]The inevitable-discovery doctrine, and the closely related independent-source doctrine, are discussed at length in the *amicus curiae* brief of the State of California, *et al.* (Cal. Am. Br.)

dence should be received." *Id.* at 444 (footnote omitted).

There is no doubt that the evidence would have inevitably been discovered in this case. The police had a valid warrant that allowed them to search petitioner's house, and the search would have taken place regardless of whether the police knocked and announced their presence. Evidence should only be excluded when "the challenged evidence is *in some sense* the product of illegal governmental activity." *Id.* (quotation marks and citation omitted; emphasis in *Nix*). The only sense in which the evidence in this case is connected to any illegal police conduct -- *i.e.*, the only circumstance in which the failure to knock and announce might have "caused" the discovery -- is if the notice given by the police of their presence had given petitioner time to destroy the evidence. It "defies both logic and common sense [ ]" to conclude the Fourth Amendment affords that protection to petitioner. *Segura*, 468 U.S. at 816; *see Ker*, 374 U.S. at 39 (plurality opinion) (quoting *People v. Maddox*, 46 Cal. 2d 301, 306, 294 P.2d 6, 9, *cert. denied*, 352 U.S. 858 (1956)); *see also* Cal. Am. Br. at 13-15.

Exclusion in cases like this will not serve the deterrent purposes of the exclusionary rule because the decision to act illegally (*i.e.*, not knock and announce) is not motivated by a desire to gather evidence. Instead, the illegal conduct is motivated by a desire to accomplish successfully and safely the ends of the judicial mandate to law-enforcement officers -- to seize certain items described by the warrant. Exclusion would achieve the surprising and unfortunate end of excluding contraband seized by a valid search warrant founded on probable cause *and* the perilous effect of leaving law-enforcement officers uncertain of their authority to take command of the scene to ensure the execution of that warrant. *See Summers*, 452 U.S. at 702-03; *see also* Cal. Am. Br. 18-20. Thus, exclusion of evi-

dence is not required to remedy a violation of a knock-and-announce rule. *See, e.g, Commonwealth v. Lopez*, 31 Mass. App. Ct. 547, 549-50, 581 N.E.2d 485, 486-87, *review denied*, 411 Mass. 1105, 586 N.E.2d 10 (1991) (even if no-knock provision of warrant wrongly included, facts of search showed exclusion would not advance any deterrent effect); *see also* Cal. Am. Br. at 21-23.[21]

If the Fourth Amendment requires a knock-and-announce rule so that the failure to knock and announce can later be judged unreasonable and sanctionable, the remedy should speak to the illegal entry, not the legal seizure pursuant to a valid warrant. *Cf.* Cal. Am. Br. at 21. Surely a better remedy lies in the civil law for remonstrance of the hypothetically unreasonable behavior related to taking command than by exclusion of evidence reasonably seized pursuant to a valid search warrant.

B. Even If Exclusion Would Ordinarily Be The Appropriate Remedy, Exclusion Is Not Required Here Because The Entry Was Made In Good-Faith Reliance On State Law That Knock And Announce Was Not Required.

Exclusion has little deterrent effect on police officers who have reasonably relied on judicial determinations that a search warrant may issue. *United States v. Leon*, 468 U.S. 897 (1984). Likewise, exclusion would have little deterrent effect on officers reasonably acting under a state statute. *Illinois v. Krull*, 480 U.S. 340 (1987). As the Court has recognized, the exclusion-

---

[21] As *amicus* points out, the Court's judgments in *Miller* and *Sabbath* are not contrary authority as neither case involved a valid warrant and both interpreted 18 U.S.C. § 3109, not the Fourth Amendment. Cal. Am. Br. at 23-25.

ary rule was designed to deter the police, not judges and legislators. *Leon*, 468 U.S. at 916; *Krull*, 480 U.S. at 351. The officers in this case relied on Arkansas law governing the execution of search warrants. If that law is now constitutionally invalid, "[t]here is nothing to indicate that applying the exclusionary rule to evidence seized pursuant to the [law] prior to the declaration of its invalidity will act as a significant, additional deterrent." *Krull*, 480 U.S. at 352 (footnote omitted).

The officers' failure to knock and announce prior to their entry into petitioner's residence was objectively reasonable because the officers could not have known that the Fourth Amendment required them to knock and announce. *Cf. United States v. Moland*, 996 F.2d 259, 261 (10th Cir. 1993), *cert. denied*, 114 S. Ct. 722 (1994) (applying good-faith exception to Colorado no-knock rule in drug cases). Nothing in the Arkansas Rules of Criminal Procedure or case law would have suggested that a knock and announce would be required prior to the execution of a valid search warrant.[22]

Indeed, in 1982 the Arkansas Court of Appeals held that officers are not required to knock and announce before executing a search warrant. *Dodson v. State*, 4 Ark. App. 1, 5-10, 626 S.W.2d 624, 626-29, *cert. denied*, 457 U.S. 1136 (1982) (stat-

---

[22] Petitioner's suggestion that knock and announce is required before entry to make an arrest under Ark. Code Ann. § 16-81-107(c) (1987), *see* Pet. App. A at A-3, ACLU Br. at 17 n. 30, is almost certainly wrong as a matter of state law. The Arkansas Rules of Criminal Procedure have no knock-and-announce requirement for searches or arrests, and under Arkansas law, the Rules prevail over conflicting provisions of the Arkansas Code. *E.g., Hickson v. State*, 316 Ark. 783, 784-85, 875 S.W.2d 492, 493 (1994).

ing that Rule 13.3 contains no knock-and-announce requirement and discussing 18 U.S.C. § 3109 and this Court's case law).[23]

Moreover, as petitioner concedes, nothing in the Court's jurisprudence would have suggested to a reasonable officer that Arkansas' law governing the execution of search warrants was constitutionally infirm. Pet. Br. at 50. Consequently, just as the officers in *Krull* acted in objectively reasonable reliance on the Illinois statute allowing them to search certain automotive dealers' facilities, *see Krull*, 480 U.S. at 356, the officers in this case acted in objectively reasonable reliance on Arkansas law allowing them to execute a search warrant without knocking and announcing prior to entry.[24]

The hoped-for deterrent effect of exclusion in this case would be no more useful than it would have been in *Krull* or *Leon*. *See Krull*, 480 U.S. at 350 (quoting *Leon*). As in those cases, exclusion here would not punish the officers for behavior which they knew to be wrong, but for behavior which they reasonably believed to be right. The exclusionary rule serves no Fourth-Amendment interest by meting out such a punishment in this case.

---

[23]In 1977 a federal district court concluded that knock and announce was required under Arkansas law. *United States v. Price*, 441 F. Supp. 814, 816-17 n.8 (E.D. Ark. 1977) (though applying Fourth Amendment, court concluded that under state law same result would obtain). The federal district court's conclusions about state or federal law could not, of course, bind the Arkansas state courts. *See Lockhart v. Fretwell*, 113 S. Ct. 838, 846 (1993) (Thomas, J., concurring).

[24]A similar issue is raised in *Arizona v. Evans* (U.S. No. 93-1660) (orally argued Dec. 7, 1994) (reliance on facially valid police-radio report of arrest warrant).

CONCLUSION

The judgment of the Supreme Court of Arkansas should be affirmed.

Respectfully submitted,

WINSTON BRYANT
Arkansas Attorney General

OF COUNSEL:

ANDREW D. LEIPOLD
University of Illinois
College of Law
504 E. Pennsylvania Ave.
Champaign, IL 61820
(217) 333-0931

KENT G. HOLT*
VADA BERGER
DAVID R. RAUPP
Assistant Attorneys General
200 Tower Building
323 Center Street
Little Rock, AR 72201
(501) 682-2007

ATTORNEYS FOR RESPONDENT

*COUNSEL OF RECORD

February 23, 1995

APPENDICES

APPENDIX A

Arkansas Rule of Criminal Procedure 13.3 (1994), governing the execution of search warrants, provides as follows:

> (a) A search warrant may be executed by any officer. The officer charged with its execution may be accompanied by such other officers or persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.
>
> (b) In the course of any search or seizure pursuant to the warrant, the executing officer shall give a copy of the warrant to the person to be searched or the person in apparent control of the premises to be searched. The copy shall be furnished before undertaking the search or seizure unless the officer has reasonable cause to believe that such action would endanger the successful execution of the warrant with all practicable safety, in which case he shall, as soon as is practicable, state his authority and purpose and furnish a copy of the warrant. If the premises are unoccupied by anyone in apparent and responsible control, the officer shall leave a copy of the warrant suitably affixed to the premises.
>
> (c) The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of such search, the officer discovers things not specified in the warrant which he reasonably believes to be subject to seizure, he may also take possession of the things so discovered.
>
> (d) Upon completion of the search, the officer shall

make and deliver a receipt fairly describing the things seized to the person from whose possession they are taken or the person in apparent control of the premises from which they are taken. If practicable, the list shall be prepared in the presence of the person to whom the receipt is to be delivered. If the premises are unoccupied by anyone in apparent and responsible control, the executing officer shall leave the receipt suitably affixed to the premises.

(e) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect an entry or to open containers as is reasonably necessary for the successful execution of the search warrant with all practicable safety. The use of deadly force in the execution of a search warrant, other than in self-defense or defense of others, is justifiable only if the executing officer reasonably believes that there is a substantial risk that the persons or things to be seized will suffer, cause, or be used to cause death or serious bodily harm if their seizure is delayed, and that the force employed creates no unnecessary risk of injury to other persons.

APPENDIX B

Jurisdictions with exceptions to their knock-and-announce rules or with no rule at all.

ALABAMA

McClellan v. State, 452 So.2d 909 (Ala. Crim. App. 1984) (no violation of knock-and-announce statute where the officers pursued the defendant inside house to prevent him from flushing marijuana down the toilet)

ALASKA

Hudson v. State, 792 P.2d 290 (Alaska Ct. App. 1990) (knowledge of defendant's prior possession of weapons created exigency that justified noncompliance with knock-and-announce requirement)

CALIFORNIA

People v. Santiago, 71 Cal.2d 18, 453 P.2d 353, 76 Cal. Rptr. 809 (1969) (en banc) (the police must have a reasonable belief based on specific facts that evidence will be destroyed to justify unannounced entry)

COLORADO

People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974) (en banc) (exigent circumstances are always present in searches for narcotics justifying entry without knock and announce)

CONNECTICUT

State v. Pelletier, 209 Conn. 564, 552 A.2d 805 (1989) (possibility of physical peril to officers executing search warrant justified any noncompliance with knock-and-announce requirement)

DELAWARE

Dunfee v. State, 346 A.2d 173 (Del. 1975) (good-faith police belief that compliance will increase their peril, frustrate the arrest, or permit destruction of evidence justifies unannounced entry)

DISTRICT OF COLUMBIA

Poole v. United States, 630 A.2d 1109 (D.C. App. 1993), *cert. denied*, 115 S.Ct. 160 *and* 115 S.Ct. 166 (1994) (reasonable belief that the defendant may be armed and use arms against officers justified noncompliance with knock-and-announce requirement)

FLORIDA

State v. Bamber, 630 So.2d 1048 (Fla. 1994) (particular facts are necessary to show exigent circumstances)

State v. Price, 564 So.2d 1239 (Fla. Dist. Ct. App. 1990) (belief that compliance with the knock-and-announce rule will increase peril to the police justifies noncompliance with the knock-and-announce requirement where the police knew the defendant had a history with concealed weapons)

GEORGIA

Scull v. State, 122 Ga. App. 696, 178 S.E.2d 720 (1970) (police believed that the guns were in the apartment and the evidence (heroin) would be easily destroyed creating exigency that justified noncompliance with knock-and-announce rule)

HAWAII

State v. Davenport, 55 Haw. 90, 516 P.2d 65 (1973) (failure to knock and announce is justified in searches for drugs since drugs are easily destroyed)

IDAHO

State v. Rauch, 99 Idaho 586, 586 P.2d 671 (1978) (recognized exigent circumstances exception to knock-and-announce requirement)

ILLINOIS

725 I.L.C.S. 5/108-8(b) (West 1994) (no-knock warrant)

People v. Seaberg, 262 Ill.App. 3d 79, 635 N.E.2d 126 (1994) (police knowledge of the defendant's possession of a gun and reasonable belief that the defendant may use the gun against officers or third parties justified failure to knock and announce)

INDIANA

Crabtree v. State, 479 N.E.2d 70 (Ind. Ct. App. 1985) (police belief that drugs were being destroyed justified failure to knock and announce)

IOWA

State v. Cohrs, 484 N.W.2d 223 (Iowa Ct. App. 1992) (exigent circumstances allowed; belief of police that drugs were being destroyed justified failure to knock and announce)

KANSAS

State v. Tyler, 251 Kan. 616, 840 P.2d 413 (1992) (Kansas has not adopted a knock-and-announce requirement)

KENTUCKY

Commonwealth v. Gross, 758 S.W.2d 436 (Ky. 1988) (when exigent circumstances exist, a search warrant can be executed without knock and announce)

LOUISIANA

State v. Viera, 449 So.2d 644 (La. Ct. App. 1984) (belief of police that marijuana would be easily destroyed justified failure to knock and announce)

MAINE

State v. Hider, 649 A.2d 14 (Me. 1994) (no knock-and-announce requirement in Maine)

MARYLAND

Waugh v. State, 3 Md. App. 379, 239 A.2d 596 (1968) (police belief that under the circumstances drugs will be destroyed justifies failure to knock and announce)

MASSACHUSETTS

Commonwealth v. Scalise, 387 Mass. 413, 439 N.E.2d 818 (1982) (belief of police that drugs will be quickly and easily destroyed justifies failure to knock and announce; the court rejected a blanket rule that would permit no-knock entries whenever the object of the search by its nature could be easily destroyed)

MICHIGAN

People v. Kerschner, 132 Mich. App. 623, 348 N.W.2d 282 (1987) (police have no duty to announce when doing so would permit an escape, would endanger the safety of the police or public, or would lead to destruction of material evidence)

MINNESOTA

State v. Valento, 405 N.W.2d 914 (Minn. Ct. App. 1987) (belief that home was being used for a drug business justified unannounced entry by police pursuant to warrant to that effect)

MISSISSIPPI

Miss. Code Ann. § 41-29-157(c) (1993) (no-knock allowed in drug cases)

MISSOURI

State v. Parrish, 852 S.W.2d 426 (Mo. Ct. App. 1993) (knowledge by police that the defendant drew a weapon on an undercover officer two hours earlier justified police noncompliance with knock-and-announce statute)

NEBRASKA

Neb. Rev. Stat. § 29-411 (1993) (judge may issue no-knock warrant)

State v. Meyer, 209 Neb. 757, 311 N.W.2d 520 (1981) (magistrate may issue a no-knock warrant upon proof that evidence sought will be easily destroyed if police knock and announce prior to entry)

NEW HAMPSHIRE

State v. Matos, 135 N.H. 410, 605 A.2d 223 (1992) (exigent circumstances exist where small quantities of narcotics are being packaged and in a residence with traditional plumbing facilities)

NEW JERSEY

State v. Love, 233 N.J.Super. 38, 558 A.2d 15 (1989)(unannounced entry justified where immediate action is required to preserve evidence, knocking would increase peril to officer, or the arrest would be frustrated)

NEW MEXICO

State v. Ortega, 117 N.M. 160, 870 P.2d 122 (1994) (potential for destruction of drug evidence is enough to justify unannounced entry)

State v. Attaway, 117 N.M. 141, 870 P.2d 103 (1994) (exigent circumstances, including risk of danger to officers, may excuse compliance with knock-and-announce requirement)

NEW YORK

N.Y. Crim. Proc. L. § 690.35(3)(b) (West 1995) (no-knock warrant)

People v. Atkinson, 122 A.D.2d 385, 505 N.Y.S.2d 203 (1986) (issuance of no-knock warrant was appropriate where object of search was drugs which could easily be destroyed)

NORTH CAROLINA

State v. Prevette, 43 N.C. App. 450, 259 S.E.2d 595 (1979), *cert. denied,* 447 U.S. 906 (1980) (exigent circumstances sufficient for warrantless search also sufficient for unannounced entry)

NORTH DAKOTA

State v. Sakellson, 379 N.W.2d 779 (N.D. 1985) (exigent circumstances may justify unannounced entry, none present)

OKLAHOMA

Gamble v. Oklahoma, 546 P.2d 1336 (Okla. Crim. App. 1976) (where the facts showed that the defendant was aware of the authority and the presence of the police, knocking and announcing would have been a useless gesture therefore noncompliance with the knock-and-announce requirement excused)

OREGON

State v. Ford, 310 Or. 623, 801 P.2d 754 (1990) (officers' reasonable apprehension of peril justified unannounced entry)

PENNSYLVANIA

Commonwealth v. Bull, 422 Pa. Super. 67, 618 A.2d 1019 (1993) (exigent circumstances recognized, none shown in case)

RHODE ISLAND

State v. Johnson, 102 R.I. 344, 230 A.2d 831 (1967) (because the object of the search was heroin which is easily destroyed, any noncompliance with knock-and-announce requirement was justified)

SOUTH DAKOTA

S.D.C.L. § 23A-35-9 (1994) (no-knock warrant)

State v. Steingraber, 296 N.W.2d 543 (S.D. 1980) (failure of police to knock and announce while entering an enclosed porch did not violate knock-and-announce statute where the officer substantially complied with statute by announcing purpose while entering living quarters of home in full view of residents)

TENNESSEE

Keith v. State, 542 S.W.2d 839 (Tenn. Crim. App. 1976) (police's reasonable belief that the occupants of place to be searched were destroying drug evidence excused any noncompliance with knock-and-announce requirement)

TEXAS

Ellerbee v. State, 631 S.W.2d 480 (Tex. Crim. App. 1981) (police belief that drugs were about to be destroyed justified failure to knock and announce)

UTAH

Utah Code Ann. § 77-23-210(2) (Michie 1994) (no-knock provision)

State v. Lee, 863 P.2d 49 (Utah Ct. App. 1993) (issuance of no-knock search warrant appropriate where target of search (drugs) may be easily destroyed)

State v. Rosenbaum, 845 P.2d 962 (Utah Ct. App. 1993) (no-knock search warrant appropriate where drugs may be destroyed and firearms had been observed at the residence)

VERMONT

State v. Ogden, 640 A.2d 6 (Vt. 1993) (noncompliance with knock-and-announce requirement justified where police reasonably believe that awaiting a reply would jeopardize the safety of officers)

VIRGINIA

Heaton v. Commonwealth, 215 Va. 137, 207 S.E.2d 829 (1974) (per curiam) (where police reasonably believe that evidence (drugs) will be destroyed if knock-and-announce requirement is complied with, unannounced entry is excused)

Commonwealth v. Woody, 13 Va. App. 168, 409 S.E.2d 170 (1991) (officers failure to comply strictly with knock and announce excused where unannounced entry was necessary to prevent the destruction of evidence)

WASHINGTON

State v. Allen, 40 Wash. App. 27, 696 P.2d 45 (1985) (police knowledge of the defendant's possession of firearms and possibility that the defendant would use firearms against the police justified unannounced entry)

WISCONSIN

State v. Stevens, 181 Wis.2d 410, 511 N.W.2d 591 (1994), *petition for cert. filed* (U.S. No. 93-9026) (May 4, 1994) (no-knock entry justified when police reasonably believe that announcement of their presence would endanger their safety, or that of others, or when police reasonably believe that unannounced entry is required to prevent destruction of evidence)

State v. Watkinson, 161 Wis.2d 750, 468 N.W.2d 763 (Wis. Ct. App. 1991) (issuance of no-knock warrant appropriate where police had information that the defendant had a revolver in his residence)

WYOMING

Lobatos v. State, 875 P.2d 716 (Wyo. 1994) (issuance of no-knock search warrant appropriate where police information obtained in advance shows reasonable cause to believe exigent circumstances exist which would endanger the successful execution of the warrant)